In the High Court of Punjab and Haryana at Chandigarh

Date of Decision :- 23.8.2006

Niranjan Singh and others

....Appellants

Versus

State of Punjab and others

.... Respondents

Coram:- HON'BLE MR. JUSTICE RANJIT SINGH

Present:- Mr.Sarjit Singh, Senior Advocate with
Mr.Naresh Jain, Advocate for the appellants.

Mr.Jayender S.Chandail, A.A.G. Punjab.

Mr.Y.S.Turka, Advocate for respondents No.2 to 10.

Mr.Arun Jindal, Advocate for respondent No.11.

RANJIT SINGH, J.

The appellants have been non-suited on the ground that Civil Court had no jurisdiction to decide the suit filed by them in view of Section 47 of the Pepsu Tenancy and Agricultural Land (Second Amendment) Act (hereinafter referred to as "the Act"). Having failed before the first appellate Court, they are in regular second appeal. It is claimed that a substantial question of law relating to the exclusion of the jurisdiction of the civil Court, which cannot be readily inferred and certainly could not have been inferred in the present case on the basis of well settled principle, arises in this case. It is further the case of the appellants that the manner in which the issue has been taken up and decided as a preliminary issue was also contrary to law and hence would also require to be dealt with being a

substantial question of law.

The facts leading to filing of the suit and the present regular second appeal may be noticed in brief.

Appellant Niranjan Singh and his five brothers (four minors) being son of Amar Singh had filed a suit against the State of Punjab and 14 others for possession of the land measuring 88 kanals 6 marlas described in the head note of the plaint. It is claimed in the plaint that the plaintiffs owned agricultural land measuring 345 Bighas 10 Biswas in village Rathian, which was ancestral and coparcenary property of the appellants. Appellants No.3 to 6 were minor at the time of filing of the suit. It is further disclosed that the Act came into force on 30.10.1956. At that time, the whole land in the revenue record was shown in the name of Amar Singh, father of the appellants. It is claimed that Amar Singh inherited his land from his father and, therefore, the property was coparcenary. Accordingly, the appellants did not file any return as required under Section 32-B of the Act because share of the appellants did not exceed the permissible area. The Collector (Agrarian), however, is stated to have started proceedings under Sections 32-C and 32-D of the Act without notice to the appellants and declared an area measuring 7.76 S.A. of land as surplus. This order was passed on 27.1.1960. Suit was filed terming this order passed by the Collector as wholly without jurisdiction and nullity being contrary to the mandatory provisions of the Act and for being in violation of principles of natural justice. Attacking this order, further it is claimed that the same was bad as the property was coparcenary property of the appellants and, therefore, their individual share did not exceed the permissible area. It is pleaded that no notice was ever issued to the appellants by the Collector

besides pleading that some area was under the cultivating possession of the tenants and if that part of the property was taken possession of the remaining area, then the land of the appellants did not exceed the permissible area. It was stated that the consolidation of holdings in the village had been held and the Collector was under obligation to separate the surplus area before the same could be utilized, which was not done and, accordingly, it is claimed that the disputed land had been illegally taken by the Collector. The appellants have thus claimed back their possession.

The suit was contested by the State of Punjab and other defendants. Separate written statements were filed by the State and the other defendants. However, the plea in both the written statements was more to less identical. Apart from the other submissions, it was pleaded that civil Court had no jurisdiction to entertain the suit because the same was barred under the Act. On merits, it was submitted that the Collector had taken the possession of the land after declaring the area of Amar Singh as surplus and had utilized the same in 1961 itself. Written statement further disclosed that the defendants other than the State had been in possession of this area claiming themselves to be owners and if for any reason the declaration of the land as surplus was not legal, then they had become owners by adverse possession as a period of more than 12 years had already expired before the present suit was filed. It is also the stand of the defendant-respondents that the appellants had not intentionally given the date of their dispossession in order to avoid detection of the fact that the suit was time barred. In this regard, it was submitted that the area had been declared surplus in the year 1960 and utilized in 1961. It is also disclosed that the consolidation had taken place 14 to 15 years from the date of filing

of the suit and the defendant-allottees of the area had been given new khasra numbers in lieu of the old after repartition during consolidation. Accordingly, it was pleaded that there was no question of Collector separating the surplus area before utilizing the same. Another fact of significant disclosed in the written statement is that Amar Singh alone was recorded as owner of the property in the revenue record and it is, accordingly, pleaded that the appellants had no right to file the present suit. Stating that the entire land was in possession of Amar Singh, the averment that land was under tenant was denied. In short, the order passed by the Collector declaring the land to be surplus has been termed as just and proper. After filing of the replication, number of issues were settled. One of the issues viz. Issue No.9 was framed relating to jurisdiction of the civil Court to entertain and try the suit and it reads as follows:-

> "Whether this Court has got jurisdiction to entertain and try the suit? OPD"

On an application moved by the defendant State of Punjab and others, issue No.9, vide order dated 13.11.1981, was treated as preliminary issue. Making reference to the provisions of Section 47 of the Act, the trial Court came to the conclusion that this Section specifically excluded the jurisdiction of the civil Court to settle, decide or deal with any matter which under this Act was required to be settled, decided or dealt with by the authorities under the Act. It was pleaded by the appellants that the impugned order passed by the Collector was without jurisdiction and nullity and hence civil Court would be competent to entertain the suit irrespective of the provisions of Section 47 of the Act. In this regard, reliance was placed on the case of Smt.Bhuro and another Versus Punjab State and

others, 1981 P.L.J. 379. Dealing with the grounds raised by the appellants to challenge the order being without jurisdiction for want of notice to the appellants, it has been held that as per the revenue record, Amar Singh alone was recorded as the owner. The plea of the appellants that they were still entitled to a notice as the property being coparcenary property, was repelled by making reference to Section 32 KK Assuming the said assertion of the appellants to be correct, trial Court, after referring to the provisions of Section 32 KK, held that the said provision was a complete answer to the said contention raised by the appellants. Section 32 KK provides that where the land owner and his descendants constitute Hindu undivided family then the land owned by such family shall, for the purpose of this Act, be deemed to be the land of that land owner and no descendant shall, as a member of such family, be entitled to claim that in respect of his share of such land he is landowner in his own right. It was accordingly held that even if the plaintiffs were taken to be coparceners and the property could be assumed to be coparcenary, then also the entire property would be deemed to be in the hands of Amar Singh alone and, therefore, no notice was required to be served on the appellants before declaring the area of Amar Singh as surplus. Dealing with the contention of the appellants that some tenants were in cultivating possession of the land, which could not be declared surplus area, it was observed that the Collector had jurisdiction to decide if the entire land was in the cultivation of Amar Singh, which was a finding of fact. Even if this finding of fact returned by the Collector was wrong, it cannot be termed as nullity and void. Such an order could be taken in appeal and got corrected as it would at worst be an illegal order. The plea relating to competency of the Collector to separate the surplus area of the concerned

person from the area of the land obtained by him after consolidation also did not find favour with the trial Court on the ground that the area was declared surplus in 1960 and that possession was taken thereafter and utilized in the year 1961. The stand of the defendant-respondents in this regard had not been controverted by the appellants and, accordingly, it was held that question of application of Section 32 MM of the Act would not arise. It was also found by the trial Court that the above noted grounds if at all were available to Amar Singh, father of the appellants, who was landowner and whose area had been declared surplus and that the plaintiffs, who were not landowners within the meaning of the Act had no right to so urge. Finding that the order of the Collector as such could not termed without jurisdiction or nullity, it was held that the civil Court would not have jurisdiction to entertain this suit being barred under Section 47 of the Act.

First appellate Court concurred with the findings of the trial Court and found that the trial Court had rightly held that the jurisdiction of the civil Court to entertain the suit was barred under Section 47 of the Act. It was thereafter that the present second appeal was filed.

Learned Senior counsel Mr. Sarjit Singh, while relying upon the case of Smt.Bhuro (supra) has basically made two fold submissions. As per him, the question of jurisdiction of the civil Court to try a particular suit would require to be determined on the basis of the allegations made in the plaint without going into the veracity of merits of the case. He has further submitted that the jurisdiction of the civil Court in this case was not barred as it was shown that the impugned order was nullity and had been passed without serving notice, if any, by the authorities before declaring the area to be surplus. Further elaborating the submissions, counsel would submit that

it is well established that the exclusion of the jurisdiction of the civil Court in the matter relating to the determination of the question of title of ownership is not to be readily inferred and the power of statute debarring the jurisdiction of the civil court has to be strictly interpreted. His primary submission, of course, was that question of jurisdiction of the civil Court was required to be determined on the basis of the allegations made in the plaint i.e. without going into the veracity of the merits of the same. In this regard, he has relied upon the observations contained in para 4 of Smt.Bhuro'a case (supra), which are as under:-

> "It is beyond dispute that the question of jurisdiction of the civil Court to try a particular suit is to be determined on the basis of the allegations made in the plaint i.e. without going into the veracity on the merits of the same. Even the pleas on merits raised in defence are not relevant for that consideration. It is equally well established that the exclusion of the jurisdiction of the Civil Court in matters relating to the determination of the question of title or ownership is not to be readily inferred and the provisions of a statute barring the jurisdiction of the civil Court have to be strictly interpreted. Keeping these principles and the allegations made in the plaint to the effect that the appellants are the owners of the suit land and had not been served with any notice of any sort by any of the authorities acting under the Act before declaring their area as surplus and thus the resultant order dated March 17, 1964, was void qua them, it looks patent to me that the jurisdiction of the trial Court to try this suit was not barred by the provisions

of section 47 of the Act. Though I need not go into the merits of the question as to whether the order dated March 17, 1964, is an order without jurisdiction as that would be a consideration on merits yet the learned counsel for the appellants has made a reference to two judgments of this Court wherein this aspect of the case has been considered. Judgment of the learned single Judge in Mohan Lal v. Nahar Singh, 1969 Current Law Journal 766 (= 1969 P.L.J. 449), on which reliance has been placed by both the lower courts in dismissing the suit of the plaintiffs was reversed by Letters Patent Bench on appeal and this later judgment is reported as Nahar Singh v. Mohan Lal, 1971 P.L.J. 328. It was held that section 47 of the Pepsu Tenancy and Agricultural Lands Act, 1955 does not bar the jurisdiction of the civil Court to try a suit based on allegations that the actio of the authority was without jurisdiction. In Puran Singh v. The State of Punjab and another, 1975 P.L.J. 1, it has again been held by a Division Bench that it is always open to a party to plead and prove that the purported order of the Financial Commissioner. Commissioner or the Collector or the Prescribed Authority has not been made under or in pursuance of the Act, and is therefore not immune to an attack in a civil Court. For the assertion that the order dated March 17, 1964, is void being without notice to the appellants, the learned counsel for the appellants relies on a Full Bench judgment of Five Judges of this Court in Harnek Singh and another v. The State of Punjab and others, 1971

P.L.J. 727, wherein it has been held that transfers of land effected by a landowner from out of his holding prior to August 21,1956,have to be given full effect and no part of land so transferred is to be deemed to belong to the landowner for purposes of declaring his surplus area. It has further been held that such a transferee is entitled to a notice or a hearing before the area in his land can be declared surplus. Respondent Nos.1 and 2's plea that while determining the surplus area of a landowner, the area in the hands of another can be held to be surplus under the provisions of the Act and such an order is made sacrosance by the provisions of section 47 of the Act looks strange on the face of it. Learned counsel for the respondents could not refer to any judgment contrary to the ones relied upon by the learned counsel for the appellants."

He has also referred to Full Bench decision of this Court in the case of State of Haryana and others versus Vinod Kumar and others 1986 P.L.J. 161 to urge that the order of any Tribunal of special jurisdiction passed in violation of the statute or principles of natural justice being nullity is open to challenge in the civil Court even if statute expressly bars jurisdiction of the civil Court to entertain the suit to challenge validity or legality of the order passed by the authority. Learned counsel has also made reference to Order 7 Rule 11 and Order 14 Rule 2 CPC to say that the decision of the Court to treat the issue of jurisdiction as a preliminary issue and the manner in which it was dealt with and decided by the Court suffers from serious procedural irregularity and hence cannot be sustained.

On the other hand, learned counsel representing the State has

submitted with equal vehemence that the Court has rightly decided the issue as a preliminary issue which related to its jurisdiction. To rebut the submission made by the counsel for the appellants, the State counsel has submitted that discretion to decide issue as a preliminary one was that of the civil Court and that the same can be raised at any state even at threshold of the proceedings or at any later stage subsequent thereto.

Basic issue that may require determination in this case is whether the Courts below are justified in treating the issue of jurisdiction of the civil Court as preliminary issue and whether while so deciding the Courts have committed any procedural or other irregularity which may call for interference. It is also required to be seen whether the decision of the courts below to hold that jurisdiction of the civil Court was barred is legally sustainable or not. The treating of any issue to be preliminary issue is regulated by Order 14 Rule 2 CPC which reads as under:-

> "2.**Court to pronounce judgment on all issues-- (2)** Where issues both of law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of an an issue of law only, it may try that issue first if that issue relates to---
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> (a) the jurisdiction of the Court, or
>
> (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined and may deal with the suit in accordance with the decision on that issue."

Thus, it is clear that where any issue relates to the jurisdiction

of the civil Court or bar to suit created by law is involved, the Court may postpone the settlement of the other issues until preliminary issue with regard to jurisdiction of the Civil Court or to such bar has been determined. The Order 7 Rule 11 (d) CPC, which regulates the rejection of plaint and relevant in this regard reads as under:-

> "**11. Rejection of plaint.---** The plaint shall be rejected in the following cases:--
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> (a) .....
>
> (b) .....
>
> (c) .....
>
> (d)where the suit appears from the statement in the plaint to be barred by any law."

Thus, Order 7 Rule 11 (d) provides that where a suit appears from the plaint to be barred by law, then the same can be rejected. Having regard to the wording of Order 7 Rule 11 (d), it has been submitted that only plaint was required to be seen to determine if the suit was barred by any law and nothing else could have been looked into. In this regard, support has been taken from the observations made in the case of Smt.Bhuro (supra), reproduced above, wherein it is stated that the question of jurisdiction of civil Court to try a suit is determined on the basis of allegations made in the plaint and without going into the veracity on the merits of the case. It is, accordingly, submitted that the action of the courts below in looking into written statements and replication was not permissible and amounted to procedural irregularity. Initially, counsel for the appellants had submitted before me that the issue of jurisdiction was also required to be determined by the Court after taking evidence once the Court had struck the issues after

service of notice and filing of written statement/replication etc. In fact, the appellants had made a prayer through a Civil Misc. application seeking permission to lead evidence. During the course of his arguments, he made prayer for withdrawal of the said application perhaps realizing that this ran contrary to law stating that the issue of jurisdiction was required to be decided on the basis of plaint alone.

It is first required to be seen if the preliminary issue regarding rejection of the plaint being barred by law can be decided in the course of proceedings or if it is required to be decided at the very threshold. There is nothing in Order 7 Rule 11 CPC which can indicate that this issue of rejection of plaint if not decided at threshold cannot be decided by the Court at any stage as preliminary issue or that the plaint can not be rejected on the grounds contained in this provision. What is provided in this Rule is that plaint can be rejected on the ground given therein and one of the ground reads that if it appears from the statement in the plaint that the suit is barred then the plaint can be rejected. Order 14 Rule 2 CPC merely provides that subject to the provisions of Sub Rule 2, the Court is required to pronounce the judgment on all the issues. The jurisdiction of the civil Court is barred or bar to the suit created by any law for the time being in force in terms of Order 14 Rule 2 (2) can be disposed of as a preliminary issue and the Court can in such eventuality postpone the settlement of other issues until the preliminary issue is determined. O.14 R. 2 as such only limits the scope of issues which can be decided as preliminary issue and when read in conjunction with O.7 R. 11, would mean that plaint can be rejected on the issue that the same is barred by law, treating it to be preliminary issues, while doing so the decision or seeing settlement of other issues arising in

the case can be postponed. How and in what manner this is to be deciding would be a different matter. Submission that the same was required to be decided only on the basis of the plaint or at the threshold does not appear or find any support from any legal provisions. Rather, in the case of Vithal Bhai (P) ltd. Versus Union Bank of India, (2005) 4 Supreme Court Cases 315, it was specifically held that power to summarily reject conferred by Order 7 Rule 11 CPC can be exercised at threshold of the proceedings and is also available, in the absence of any restriction statutorily placed to be exercised, at any stage subsequent proceedings. The only aspect emphasized by the Court was the need of raising a preliminary issue as to the maintainability as early as possible though the power of the Court to consider the same at subsequent stage was found available. In this regard, the observations made by the Hon'ble Supreme Court in Sallem Bhai and others v. State of Maharashtra and others, AIR 2003 Supreme Court 759, relied upon by counsel for the appellants can also be noticed. It was held by the Hon'ble Supreme Court in this case that the trial Court can exercise the power under O.VII, R.11, C.P.C. at any stage of the suit before registering the plaint or after issuing summons to the defendants or at any time before the conclusion of the trial. Thus the plea that trial Court had decided the issue in regard to the bar of jurisdiction at a stage which would amount to irregularity cannot be accepted. As already noticed this cannot be read into these provisions. The plea of the counsel for the appellants that the same was required to be decided only by looking at the plaint and nothing else may also not be accepted. It is clear from O.14 R 2 that such an issue can be treated a preliminary issue, meaning thereby that it would be after filing of written statement. Obviously, as such, pleading would come

into play for deciding the preliminary issue. Judgment of Hon'ble Supreme Court in Saleem Bhai (supra) was referred by the counsel for the appellants in support of this submission. In this case, it was held that for deciding the application under O VII R.11 the averment in the plaint are germane and the pleas taken in the written statement would be wholly irrelevant at that stage. Hon'ble Supreme Court in this case was dealing with a situation where application moved under O.VII Rule 11 was rejected and directions were issued to file written statement. It was observed in this context that this is a procedural irregularity as averments in the plaint are germane to decide the plea and not deciding the application amounted to non-exercise of jurisdiction. Relevant observations are as follows:-

> "For the purposes of deciding an application under Cls. (a) and (d) of R.11 of O.VII, C.P.C., the averments in the plaint are germane, the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage; therefore, a direction to file the written statement without deciding the application under O.7, R.11 C.P.C. Cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregularity. The High Court,however, did not advert to these aspects."

It can be noticed that in the case of Saleem Bhai (supra) the application filed under Order 7 Rule 11 CPC was not dealt with but direction was issued to the defendant to file a written statement. Aggrieved against this order of not rejecting the plaint under Order 7 Rule 11 CPC,

Saleem Bhai had approached the High Court of Madhya Pradesh which confirmed the order of the trial Judge. This order was challenged before the Supreme Court wherein it was observed that the averments in the plaint are germane to the purpose of deciding application under Order 7 Rule 11 (a to (d) CPC and asking the appellants in this case to file a written statement without deciding such application was considered a procedural irregularity touching on the exercise of jurisdiction by the trial Court. This order by trial Court and High Court was interfered with as found to be suffering from non-exercise of jurisdiction. This would not advance the submission of the appellants. It would thus be clear that application moved under Order 7 Rule 11 CPC seeking rejection of the plaint on the limited ground that are now available can be moved at any stage of the proceeding and this is required to be dealt with as and when the same is filed and in case the same is not decided or not dealt with when filed then it would amount to non-exercise of jurisdiction vested in the Court. Even from the observations made in the case of Vithal Bhai (supra), it would be clear that the objections if raised for rejecting the plaint summarily can be entertained at any stage even though when raised as a preliminary objection. This would obviously mean that such objections can be raised in written statement. There is no statutory restriction placed in regard to the stage of rejection of objection or in regard to the power of the Court to entertain such objection. It cannot be accepted that the same is either required to be dealt with at threshold or only by taking into consideration the averments contained in the plaint. By very nature of the objection like the suit being barred under any law would necessarily have to be made by the opposite party once it is served notice. Since such an objection can be entertained by Court at any stage even upto

the conclusion of the trial as preliminary issue, it cannot be said that the aspects other than the plaint cannot validly be looked into while deciding the preliminary issue. As such, I do not find any procedural or other irregularity in the action of Court deciding this issue as a preliminary one and so also in the manner adopted while deciding the said issue.

Counsel has also made submission before me to challenge the decisions of the courts below on merits to say that the jurisdiction of the civil Court was not barred having regard to the facts and the circumstances of this case. It was contended that the order being in violation of natural justice and nullity would be open to challenge in the civil Court. It has also been pleaded that the exclusion of jurisdiction of the civil Court in a matter relating to determination of question of title of ownership should not be readily inferred and the provisions of statute barring the jurisdiction of civil Court has to be strictly interpreted. In this background, it was submitted before me that irrespective of the provisions of Section 47 of the Act, the jurisdiction of the civil Court to entertain the present suit was not barred as the impugned order by the Collector has been made in violation of principles of natural justice. The provisions of Section 47 of the Act read as under:-

> "No Civil Court shall have jurisdiction to settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, Commissioner, the Collector or the prescribed authority."

There cannot be any doubt that exclusion of jurisdiction of the civil Court is not to be readily inferred. Such exclusion must either be explicitly expressed or clearly implied. In this regard it was observed in

Secretary of State v. Mask and Company, AIR 1940 P.C. 105 that:-

> "It is settled law that exclusion of the jurisdiction of the civil Court is not to be readily inferred but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

In Dhulabhai v. State of MP 1968 (3) SC 662, Hi dayatullah C.J. speaking for the Court had culled out 7 propositions, two out of which, are relevant here, which are as follows:-

> "(1) Where the statute gives a finality to the orders of the special tribunal the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however,does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
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> (2)Where there is an express bar of the jurisdiction of the Court, an examination of the Scheme of the Particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court.
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> Where there is no express exclusion the examination of the

> remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter cases it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

In this case, only the Hon'ble Supreme Court held that even where the statute has given finality to the orders of the special tribunal the Civil Court's jurisdiction can be regarded as having been excluded, if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative, it would be difficult to imply or infer exclusion of Civil Court's jurisdiction. Apart from other things, what is required to be seen in such cases is the adequacy or sufficiency of the remedies provided in the scheme under the special Act. Thus, in order to see if the issue of jurisdiction of the civil Court has been rightly decided or not these principles are required to be kept in mind. I need not detain myself much in this regard as the issue appears to be finally settled against the appellants in view of the latest pronouncement of the Hon'ble Supreme Court in the case of Devinder Singh & Ors. v. State of Haryana & Anr. JT 2006 (6) SC 312. This is a case where the order for declaration of the suit

property as surplus and vesting in the State of Haryana and its allotment was challenged. The jurisdiction of the Civil Court to entertain the suit, apart from other was framed as one of the issues. The suit in this case was held maintainable by the trial court as the matter was decided without notice to the plaintiff in the said case. This order was taken in appeal which was allowed setting aside the trial Court order. Second appeal was also dismissed upholding the view of the first appellate Court. Accordingly,the matter came before the Hon'ble Supreme Court. The view of the appellate Court was affirmed by the Hon'ble Supreme Court. The bar of jurisdiction of the civil Court has been provided under Section 26 of the Punjab Security of Land Tenures Act, 1953, which was in issue before Supreme Court. Provisions of Section 26 (1) (b) of this Act and Section 47 of the Act are identically worded. Section 26 (1) reads as under:-

> "26. **Bar of jurisdiction:** (1) No civil court shall have jurisdiction to --
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> (a) .....
>
> (b) settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the prescribed authority."

Noticing that the order passed by the Collector etc. was appealable and that revision was also maintainable against such order, the Hon'ble Supreme Court has held:-

> "The principles culled out from various decisions of this Court are that even when the statute has given finality to the orders of the special tribunal, the Civil Court's jurisdiction can be

regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. Section 26 (1) (d) on the other hand specifically excludes jurisdiction of the Civil Court so far as matters which are required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, Collector or prescribed Authority. The entitlement, choice of land and the allotment are matters which are to be dealt with specifically by the authorities under the Act. Additionally, Section 18 provides a forum to ventilate the grievances under the Act in respect of several matters. This is a case of exclusion of the remedy in certain contingencies. It is not a case where the controversy cannot be resolved by the forum provided under the Act. Further in case of any grievance the validity of the order could have been questioned before the forum provided. That has not been done and on the other hand, the suit was filed after about nine years."

Accordingly, it has been held that Section 26 (1) (d) of this Act excluded the jurisdiction of the Civil Court so far as the matter was required to be decided. Similar remedies as are given under Section 26 (1) (d) of Punjab Act were available under section 47 of the Act as can be noticed. Even if the submissions made by the counsel for the appellants are to be taken at face value then also the jurisdiction of the civil Court to entertain the suit can be said to have been excluded. In a case before the Hon'ble Supreme Court, the plaintiff appellant therein was entitled to a notice and still it was found that the jurisdiction of the civil court would stand excluded in view of the special provisions made in the Punjab Security of Tenures

Act, 1953. The case of the present appellants is not placed on any better footings. Here, admittedly the appellants were not the owners and as such were not required to be issued any notice. Even if the property was coparcenary, the appellants were not entitled to any notice as per Section 32 KK of the Act. It cannot thus be said that this order declaring the land to be surplus was in violation of principles of natural justice or otherwise nullity in the eyes of law for want of service of notice to the appellants. The impugned judgment as such calls for no interference.

In view of the detailed discussion above, the present appeal is dismissed with no order as to costs.

(Ranjit Singh)
Judge

August 23,2006
AS